

THOMAS SPIESMAN  
MEMBER, NJ AND NY BARS  
DIRECT DIAL NO.: 973-889-4208  
E-MAIL ADDRESS: TSPIESMAN@PBNLAW.COM

February 28, 2011

**VIA FEDERAL EXPRESS & CT SUMMATION**


Charles M. Crout, Esq.  
Andrews Kurth LLP  
1350 I Street, NW  
Suite 1100  
Washington, DC 20005

Re: *NJDEP, et al. v. Occidental Chemical Corp., et al.*  
*Flexon Industries Corp./Thirty-Three Queen Realty, Inc.*  
Docket No.: ESX-L-9868-05 (N.J. Super)  
Our File No.: 02878.67879

Dear Mr. Crout:

Enclosed please find the Supplemental Third-Party Disclosure and a compact disk containing documents produced by third-party defendant Flexon Industries Corp./Thirty-Three Queen Realty, Inc. This disclosure is made pursuant to Case Management Order XII and the Consent Order dated January 31, 2011 in the above-captioned action. If you have any questions regarding the enclosed, please do not hesitate to contact me.

Very truly yours,



Thomas Spiesman

TS:bb  
Enclosures

cc: William Warren, Esq. (w/encls. Via FedX)  
Eric Rothenberg, Esq. (w/encls. Via FedX)  
Lee Henig-Elona, Esq. (w/encls. Via FedX)  
John M. Scagnelli, Esq. (w/encls. Via FedX)  
Peter J. King, Esq. (w/encls. Via FedX)  
Michael Gordon, Esq. (w/encls. Via FedX)  
Robert T. Lehman, Esq. (w/encls. Via FedX)  
Gregg H. Hilzer, Esq. (w/encls. Via FedX)  
Domenick Carmagnola, Esq. (w/encls. Via FedX)

100 SOUTHGATE PARKWAY, P.O. BOX 1997  
MORRISTOWN, NJ 07962-1997  
TELEPHONE (973) 538-4006  
FAX (973) 538-5146  
www.pbnlaw.com

Thomas Spiesman, Esq.  
PORZIO BROMBERG & NEWMAN, P.C.  
100 Southgate Parkway  
P.O. Box 1997  
Morristown, NJ 07962-1997  
Tel: (973) 889-4208  
Fax: (973) 538-5146  
Attorney for Third-Party Defendant Flexon  
Industries Corp./Thirty-Three Queen Realty, Inc.

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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: ESSEX COUNTY
Plaintiffs,	:	DOCKET NO. L-9868-05 (PASR)
v.	:	
OCCIDENTAL CHEMICAL CORPORATION, TIERRA SOLUTIONS, INC., MAXUS ENERGY CORPORATION, REPSOL YPF, S.A., YPF, S.A., YPF HOLDINGS, INC. and CLH HOLDINGS, INC.,	:	CIVIL ACTION
Defendants.	:	<b>SUPPLEMENTAL THIRD-PARTY DISCLOSURE</b>
MAXUS ENERGY CORPORATION and TIERRA SOLUTIONS, INC.,	:	
Third-Party Plaintiffs,	:	
vs.	:	
3M COMPANY, <i>et al.</i> ,	:	
Third-Party Defendants.	:	

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Third-Party Defendant Flexon Industries Corp./Thirty-Three Queen Realty Inc, (“Respondent”) hereby provides its Supplement to Initial Disclosure pursuant to Case Management Order (“CMO”) XII and prior CMO’s incorporated therein by reference and in accordance with terms of the January 31, 2011 Consent Order (“Consent Order”) applicable to certain of those Third-Party Joint Defense Group members who have received written confirmation that CMO XII paragraph 21(a) production of site files is complete from Drinker Biddle & Reath LLP, Andrews Kurth LLP, and/or Hannafan & Hannafan, Ltd. firms (counsel for Third-Party Plaintiffs) together with any written agreement as to terms for timing, scope and manner of production reached under the Consent Order, collectively the “Amended Production Requirements”

**Reservations and Comments**

1. Respondent reserves the right to object to the production of any documents or other information on any ground, including relevance and undue burden, and to assert any applicable privilege, including the attorney-client privilege, the work product doctrine, the common interest doctrine, confidentiality, trade secret, State and Federal Homeland Security confidentiality and any other applicable protection. These disclosures are not intended to prejudice or waive any privileges or objections Respondent may have with respect to any outstanding or subsequent requests for discovery.

2. Respondent’s investigation in this matter is continuing. Accordingly, it reserves the right to supplement, clarify, and revise these disclosures any time prior to trial to the extent additional information becomes available or is obtained through discovery. Further, Respondent reserves the right to amend these disclosures to the extent the claims brought by or alleged against Respondent in this litigation are amended.

3. Respondent reserves its right to rely on any facts, documents or other evidence that may develop or come to Respondent's attention during the course of this matter. Respondent's responses are set forth herein without prejudice to its right to assert additional objections of supplement its responses should Respondent discover additional grounds for doing so during the course of this matter.

4. "Documents", excluding electronic e-mail and Electronically Stored Information, shall have the meaning set forth in this Court's August 11, 2009 Order for Preservation of Documents and Data.

5. "Alleged Discharges" shall have the meaning set forth in the Court's CMO VIII.

6. "Sites", per CMO VIII, shall be defined as those site(s) or properties with which a Third-Party Defendant is associated in a Third-Party Complaint.

7. Document Production requirements set forth in CMO XII, paragraph 21 (as amended by the Consent Order ("Amended Production Requirements")) are read in concert with CMO VIII, paragraph 3 and CMO V, paragraph 8 incorporated by reference in CMO XII, paragraph (1). CMO VIII, *inter alia*, called for a listing of those documents to be produced by Third-Party Defendants with certain excepted categories, the "Excepted Information Categories". The Amended Production Requirements are also answered with reference to the Alleged Discharges as defined in CMO VIII. and included documents under the Excepted Information Categories except to the extent of those documents covered by logs attached hereto. To the extent requirements set forth in Amended Production Requirements are repetitive, burdensome and /or unfairly place a

duty of inquiry on Third-Party Defendants as to the Newark Bay Complex locations other than the Sites, disclosures herein are provided with reference to the Amended Production Requirements and CMO XII paragraph 21(c) unless otherwise noted. With respect to Amended Production Requirements as to CMO XII, paragraph 21(b), reference is made to information previously furnished by the JDG in connection with CMO V, paragraph 8.

8. Documents subject to claims of privilege will be detailed in a log to be furnished in accordance with the August 11, 2009 “Agreed Order Regarding Documents Withheld from Production” as appended to CMO VIII, and provided under the Amended Production Requirements.

**Production as to Paragraph 21(b) Requests**

Copies of all non-privileged Documents other than electronic email discovery, that relate to

(i.) the alleged discharge of any hazardous wastes, hazardous substances, pollutants or contaminants (“Hazardous Materials”) to the Newark Bay Complex;

**Response - See, Paragraph 7, above. See, Response to Paragraph 21c 1, i., below.**

(ii.) the potential pathways and methods by which the Hazardous Materials have been released to the Newark Bay Complex, as well as the quantity, nature and toxicity of such Hazardous Materials;

**Response - See, Paragraph 7, above. See, Response to Paragraphs 21(c), 1, i. - iv., below.**

(iii.) other actions relating to properties or operations that may have adversely impacted the environmental condition of the Newark Bay Complex

**Response - See, Paragraph 7, above.**

(iv.) the costs and damages costs and damages sought in connection with any alleged discharge of Hazardous Materials.

**Response - See, Paragraph 7, above. Third-Party Defendant further notes that all cross-claims and counterclaims and Fourth-Party claims are stayed in the present**

action and , as such, it has made no such claim against parties in this action at this time.

**Production as to Paragraph 21(c) Requests**

1. A copy of all Documents relating to the following information for the site(s), properties and/or operations with which the Third-Party Defendant is associated in the Third-Party Complaints:

i. the release or discharge of Hazardous Materials from or at that Third Party Defendant's properties or operations.

**Response - Respondent objects to this request to the extent that it assumes, suggests, and/or concludes that there was a discharge or release of pollutants, contaminants and/or hazardous substances into the Newark Bay Complex from the Respondent's site at 666 Washington Avenue, Belleville, New Jersey (the "Flexon Site") as defined in the Second Amended Complaint and Third Party Complaint B. Documents responsive to this request, subject to exceptions provided under the Amended Production Requirements, are limited to the documents on the enclosed disc and the following documents produced by Defendant and Third-Party Plaintiff Tierra Solutions, Inc.'s production pursuant to Paragraph 21 of Case Management Order XII:**

- TSI-DBR-00097698 to TSI-DBR-00097704; and
- TIERRA-B-009726 to TIERRA-B-009743.

ii. the operations, manufacturing and/or production processes, any Hazardous Materials stored or utilized on the property, and any sampling that took place on the property and any sampling or testing of the materials, by products or waste products used in connection therewith;

**Response – Respondent objects to this request to the extent that it assumes, suggests, and/or concludes that there was a discharge or release of pollutants, contaminants and/or hazardous substances into the Newark Bay Complex from the Respondent's site at 666 Washington Avenue, Belleville, New Jersey (the "Flexon Site") as defined in the Second Amended Complaint and Third Party Complaint B. Respondent limits its response in accordance with paragraph 7 above and in accordance with the Amended Production Requirements. Documents responsive to this request, subject to exceptions provided under the Amended Production Requirements, are limited to the documents on the enclosed disc and the following documents produced by Defendant and Third-Party Plaintiff Tierra Solutions, Inc.'s production pursuant to Paragraph 21 of Case Management Order XII:**

- TSI-DBR-00097698 to TSI-DBR-00097704; and
- TIERRA-B-009726 to TIERRA-B-009743.

iii. sampling results from environmental, chemical, or biological testing conducted at that Third Party Defendant's properties; and

**Response – Respondent objects to this request to the extent that it assumes, suggests, and/or concludes that there was a discharge or release of pollutants, contaminants and/or hazardous substances into the Newark Bay Complex from the Respondent's site at 666 Washington Avenue, Belleville, New Jersey (the "Flexon Site") as defined in the Second Amended Complaint and Third Party Complaint B. Respondent limits its response in accordance with paragraph 7 above and in accordance with the Amended Production Requirements. Documents responsive to this request, subject to exceptions provided under the Amended Production Requirements, are limited to the documents on the enclosed disc and the following documents produced by Defendant and Third-Party Plaintiff Tierra Solutions, Inc.'s production pursuant to Paragraph 21 of Case Management Order XII:**

- TSI-DBR-00097698 to TSI-DBR-00097704; and
- TIERRA-B-009726 to TIERRA-B-009743.

iv. any communications involving that Third-Party Defendant and any branch, department, agency or instrumentality of municipal, State or federal government relating to any discharges or releases of Hazardous Materials or this litigation.

**Response – Respondent objects to this request to the extent that it assumes, suggests, and/or concludes that there was a discharge or release of pollutants, contaminants and/or hazardous substances into the Newark Bay Complex from the Respondent's site at 666 Washington Avenue, Belleville, New Jersey (the "Flexon Site") as defined in the Second Amended Complaint and Third Party Complaint B. Respondent limits its response in accordance with paragraph 7 above and in accordance with the Amended Production Requirements. Documents responsive to this request, subject to exceptions provided under the Amended Production Requirements, are limited to the documents on the enclosed disc and the following documents produced by Defendant and Third-Party Plaintiff Tierra Solutions, Inc.'s production pursuant to Paragraph 21 of Case Management Order XII:**

- TSI-DBR-00097698 to TSI-DBR-00097704; and
- TIERRA-B-009726 to TIERRA-B-009743.

2. Any Documents relating to any industrial waste containing Hazardous Materials that was transported to, processed or treated at, or discharged from any of the sites and/or properties with which a Third Party Defendant is associated in the Third Party Complaints.

**Response – Respondent objects to this request to the extent that it assumes, suggests, and/or concludes that there was a discharge or release of pollutants, contaminants and/or hazardous substances into the Newark Bay Complex from the Respondent's**

site at 666 Washington Avenue, Belleville, New Jersey (the “Flexon Site”) as defined in the Second Amended Complaint and Third Party Complaint B. Respondent limits its response in accordance with paragraph 7 above and in accordance with the Amended Production Requirements. Documents responsive to this request, subject to exceptions provided under the Amended Production Requirements, are limited to the documents on the enclosed disc and the following documents produced by Defendant and Third-Party Plaintiff Tierra Solutions, Inc.’s production pursuant to Paragraph 21 of Case Management Order XII:

- TSI-DBR-00097698 to TSI-DBR-00097704; and
- TIERRA-B-009726 to TIERRA-B-009743.

3. Any insurance or indemnity agreement under which another person or entity may be liable to satisfy all or part of a possible judgment in this action or to indemnify or reimburse for payments made to satisfy said judgment.

**Response – Respondent objects to this request to the extent that it assumes, suggests, and/or concludes that there was a discharge or release of pollutants, contaminants and/or hazardous substances into the Newark Bay Complex from the Respondent’s site at 666 Washington Avenue, Belleville, New Jersey (the “Flexon Site”) as defined in the Second Amended Complaint and Third Party Complaint B. Respondent limits its response in accordance with paragraph 7 above and in accordance with the Amended Production Requirements. Documents responsive to this request, subject to exceptions provided under the Amended Production Requirements, are limited to the documents on the enclosed disc and the following documents produced by Defendant and Third-Party Plaintiff Tierra Solutions, Inc.’s production pursuant to Paragraph 21 of Case Management Order XII:**

- TSI-DBR-00097698 to TSI-DBR-00097704; and
- TIERRA-B-009726 to TIERRA-B-009743.

Notwithstanding the foregoing, Respondent responds that no such insurance or indemnity agreements exist.

#### **August 11, 2009 CMO VIII Excepted Information Categories**

Excepted Information includes the following:

“Information, (“Information”), including, but not limited to, environmental, chemical and/or biological testing of groundwater, surface water, soil or sediment (hereinafter “Sampling Information”) contained in the nexus packages produced pursuant



to paragraph 8(e) of CMO V”. See, Paragraph 4(a), as well as information produced under CMO XII, paragraph 21(a).

“Information previously produced to any branch, department, agency or instrumentality of the State of New Jersey including to the New Jersey Department of Environment Protection (“NJDEP”) or Information produced to any other governmental agency or entity whose responsibility it is to oversee environmental compliance in the Newark Bay Complex Area, including, but not limited to, the United States Environmental Protection Agency and the United States Army Corps of Engineers (hereinafter “Governmental Recipients”). We believe information received from such agencies are included within the exception.

“Information produced to any Licensed Site Remediation Professional (hereinafter “LSRP”) who is duly licensed by the State of New Jersey at the time of receipt of such Information where such disclosure of Information is intended to be used in connection with any remedial investigation or remedial action having an assigned case number in the NJDEP’s NJEMS system;” See, Paragraph 4(c).

“Sampling Information compiled with the expectation of being produced to a Governmental Recipient or an LSRP under Paragraphs 4(b) or 4(c) but which Sampling Information has not yet undergone quality assurance/ quality control or similar analysis;” See, Paragraph 4(d).

“Information produced by a third-party defendant to any third-party plaintiff pursuant to the New Jersey Open Records Act or other freedom of information law or regulation;” See, Paragraph 4(e).

“Information previously produced to Defendants” See, Paragraph 4(f).

“Information that falls within the attorney-client privilege and/or the attorney work product privilege.” See, Paragraph 4(g).

Dated: February 28, 2011

Respectfully submitted,

PORZIO BROMBERG & NEWMAN, P.C.  
Attorney for Third-Party Defendant Flexon  
Industries Corp./Thirty-Three Queen Realty,  
Inc.

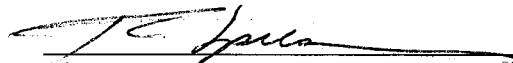
100 Southgate Parkway

P.O. Box 1997

Morristown, NJ 07962-1997

Tel: (973) 889-4208

Fax: (973) 538-5146



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Thomas Spiesman, Esq.